Chauffeurs, Teamsters and Helpers Union Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* United Grocers, Ltd. and International Longshoremen's and Warehousemen's Union, Local No. 17, AFL-CIO. Case 20-CD-596

29 July 1983

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by United Grocers, Ltd., herein called the Employer, that Chauffeurs, Teamsters and Helpers Union Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Local 150 or Teamsters), had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by International Longshoremen's and Warehousemen's Union Local No. 17, AFL-CIO (herein called Local 17 or Warehousemen).

Pursuant to notice, a hearing was held before Hearing Officer Alina M. Lopez Martin on 15, 16, and 17 September 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's ruling made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a California corporation, is engaged in the wholesale distribution of groceries, and at its Sacramento, California, location has, during the past fiscal year, received goods valued in excess of $50,000 from suppliers located outside the State of California. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 150 and Local 17 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

Based on a determination made in 1979 that it had outgrown its wholesale grocery distribution center at Fruitridge Road, Sacramento, California (herein referred to as the old facility), the Employer selected a company called Rapistan, Inc., an industry leader in the design and sale of computerized warehouse conveyor systems, to design a new facility that would both accommodate anticipated growth and achieve new levels of grocery warehousing and distribution efficiency. A year of study culminated in plans for a $50 million distribution center in West Sacramento (herein referred to as the new facility) which was to be twice the size of the existing center and to contain a "state of the art" computer conveyor system for processing and selecting customer orders.[1] At the time of the hearing, in September 1982, the Employer was in the process of transferring its entire Sacramento operation into the new facility.

The Employer's old facility employs what is known as the "conventional pick" method of operation. Orders placed by customers, ranging in size from small neighborhood convenience stores to large urban supermarkets, are punched into a computer which prints out labels at the old facility. These labels are sorted by individual store order and given to an "order selector" (represented by Local 17). The order selector, using a motorized Dolly (tugger), travels up and down the aisles of the warehouse along which the merchandise is stocked, pulls items ordered by one particular customer from the racks, attaches the labels to the cartons, and manually places the cartons on a pallet which rests on an electric pallet jack trailing the tugger. For stability and to avoid breakage, the order selector takes care to stack the heavier items on the bottom and the more fragile or lighter items on the top. When the order has been filled, or the pallet has reached a height of 6 feet, the order selector stops putting items on the pallet, drives the tugger to the warehouse dock, and places the loaded pallet in front of the door specified for the

[1] Rapistan had designed a similar system at the United Grocers' Freemont, California, facility.

customer's order, which has been filled. The order selector then returns to the warehouse to repeat this process with another customer order. At any point before dropping the pallet at the dock, the order selector may tape or strap the pallet load to stabilize the contents and prevent breakdown. Once the pallet is placed on the dock, "loaders" (represented by Local 150) prepare the pallet for shipping by stabilizing the pallet either by taping or strapping, or, when necessary, by "rebuilding" or rearranging the pallet contents, and by adding items to the pallet in order to achieve full pallet height and maximize trailer space.[2] The loader then loads the pallet onto the truck, "staging" or putting orders into sequence for delivery. Deliveries are made by drivers represented by Local 150. At the old facility, the frozen and deli food products are in a section separate from that warehousing dry groceries, but the method of selection and coding of orders is essentially the same in both sections.

The Employer's new mechanized facility is also divided into two sections, one for dry groceries and another for frozen and deli food products. Both sections will operate in essentially the same fashion, which is described below. The dry groceries section is bordered at one end by a large continuous receiving and shipping dock area. Behind the dock are rows of order "selection modules" holding layers of grocery goods for storage. Situated between the dock and the storage area is the "transfer (or palletization) station" mezzanine. Connecting the storage area and the transfer station is a highly automated system of conveyors and sorting equipment.

In the new system, the order selector is assigned to a single aisle or selection module from which he will select similar products for a variety of customers based on computer-printed case labels containing information regarding item location, quantity, and destination. The order selector will label each product case with the order label and manually place the case on the conveyor belt moving through his aisle. The case will be transported by the belt to a "pre-sort accumulation station," where it will remain until released by a management employee into an "order sortation" area. In the order sortation area the label will be read by an "electric scanner" which will automatically sort each case by customer identity and divert each customer order to 1 of 21 different "shipping lines" or "chutes." The customer-segregated cases will then travel along their respective shipping lines until they arrive at the transfer station.

Pursuant to the Employer's disputed work assignment, once at the transfer station, which is elevated from the floor of the loading dock, the order will be manually placed by a loader (represented by Local 150) onto pallets, the formation of which will be guided by a three-sided form, and then lowered by a hydraulic mechanism to the dock floor level[3] onto a set of rollers which will roll the pallet onto the floor of the shipping dock. Loaders will then place the pallet in front of the appropriate door using a forklift or pallet jack, secure the pallet for safe shipment, stage the pallet for loading, and load the pallet onto a truck for delivery by a driver.

Before breaking ground for the new facility, the Employer held a meeting for those employed at the old facility to discuss the new operation. At some point after equipment had been installed at the new facility, representatives of Local 17 were given a 45-minute tour of the facility by the Employer during which they received an explanation of how the transfer station would operate. Subsequently, in May 1981, Local 17 and Local 150 took a joint tour of the mechanized warehouse operation of Certified Grocers in Los Angeles, California, and saw the transfer station at that facility in operation. On 21 October 1981 the Employer called a meeting with representatives of Local 17 and Local 150 to familiarize both Unions with the operation of the new facility. This meeting ended soon after it began when a representative of Local 17 interrupted the Employer's presentation and stated, in the vernacular, that he had come to find out how adversely his Union was going to be affected by the new operation.

In the meantime, in July 1981, the Employer and Local 150 had embarked upon negotiations for a new collective-bargaining agreement. On 11 December 1981 the Employer and Local 150 entered into a contract which specifically provides that those in the loader classification represented by

[2] Maximum pallet height is achieved by "topping off," the process of adding goods to an otherwise complete pallet. Topping off frequently entails adding "replack goods" (items such as cigarettes or candy, which are sold in a retail unit different from the one in which the product is delivered to the Employer) and "non-conveyable products" (items such as toxic chemicals and bags of dog food) to the pallets.

Doubling, the process of stacking one pallet on top of another, is another way of achieving full pallet height. In a prior jurisdictional dispute involving the instant parties, the Board, in pertinent part, awarded "the operation of forklifts in the stacking and nonstacking of palletized goods in the shipping or loading dock area of the Employer's warehouse" to employees represented by Local 17. *Teamsters Local 150 (Bert McDowell Co.)*, 225 NLRB 1183 (1976). Since that Decision and Determination of Dispute by the Board, doubling on the dock itself has been performed by a forklift driver represented by Local 17, while doubling on the lip or loading platform of the truck, or in the trailer, has been performed by loaders represented by Local 150. Local 17 conceded at the instant hearing that a "substantial amount" of the doubling at the Employer's old facility takes place on the lip of the truck or in the trailer.

[3] This hydraulic system permits the loader to regulate the height of the pallet and thus to keep it at a convenient (waist) height until full pallet height is reached.

Local 150 shall perform the transfer station work.[4] Sometime thereafter, Local 17 learned that the Employer had awarded the transfer station work to employees represented by Local 150 and filed a grievance claiming that, under the terms of its collective-bargaining agreement with the Employer, it was entitled to the transfer station work. The Employer denied the grievance, basically on the grounds that its contract with Local 17 did not cover the disputed work. Local 17 thereafter filed an action in the Superior Court of California to compel arbitration with respect to its claim. On 11 May 1982 the Employer received a telegram from Local 150 stating that Local 150 would take economic action against the Employer if it assigned the transfer station work to employees represented by Local 17 or participated in any proceeding which would result in such an assignment. On 12 May 1982 the Employer filed the charge in the instant case.

B. *The Work in Dispute*

The work in dispute involves the operation of transfer stations at the Employer's distribution center at 3771 Channel Drive, West Sacramento, California.

C. *The Contentions of the Parties*

The Employer contends that, based on the design of its new facility, reasons of efficiency and economy mandate that the transfer station work be performed by loaders represented by Local 150, that such an assignment is consistent with the industry practice in comparable modern facilities, and that the Board should therefore find that it properly awarded the disputed transfer station work to loaders represented by Local 150. Local 150 contends that an award of the disputed work to loaders it represents is supported by the factors of efficiency and economy, industry practice, and employer preference, as well as by the fact that its most recent collective-bargaining agreement with the Employer specifically provides that the work performed by the loader classification will "include what is commonly referred to as the 'transfer station'" and that loaders have at the old facility performed a substantial amount of palletizing work comparable to that required at the transfer station. Local 17 argues that the employees it represents should be awarded the disputed transfer station work since they have traditionally and skillfully palletized customer orders at the old facility to the Employer's satisfaction; that such an award is supported by its collective-bargaining agreement with the Employer, as well as a prior Board decision;[5] that the Employer's preference should be given little weight since its award of the disputed work to Teamsters-represented loaders was extracted as part of a "collective-bargaining trade-off" with Local 150, and will result in a substantial loss of jobs for warehousemen at the expense of job gains for teamsters; and that certain operations which are relied on by the Employer and Local 150 to establish an industry precedent for awarding the transfer station work to the loaders are not comparable operations.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that (2) the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As to (1), above, the uncontradicted evidence establishes that Local 150 threatened to take economic action if the Employer assigned, or participated in any proceeding which could result in the assignment of the work involved in the operation of the transfer station to employees represented by Local 17. We therefore find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated by Local 150's threatened action.

As to (2), above, the record reflects no evidence of an independent method for voluntary resolution of disputes binding on all the parties here. Accordingly, we shall proceed to determine the instant dispute.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[6] The

[4] Specifically, the contract provides:

> When the Employer's new Sacramento Division location now under construction is opened, the loader classification will include what is commonly referred to as the "transfer station." This means that loaders will be responsible for taking out-going cases off the roller bed for loading trucks, and for all work which is required between these two functions.

[5] 225 NLRB 1183, discussed at fn. 2, *supra.*

[6] *NLRB v. Electrical Workers IBEW Local 1212 [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[7]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements and the Employer's past practice

The collective-bargaining agreement between the Employer and Local 17, which was amended in 1979, recognizes Local 17 as:

> . . . the sole collective bargaining representative of those of the Employer's employees at 8301 Fruitridge Road, Sacramento, who are covered hereby and who are more particularly identified as *all* employees performing manual wholesale grocery warehouse and packing work.

The pertinent collective-bargaining agreement between the Employer and Local 150 was executed on 23 February 1979, and extended through 31 July 1981.[8] It recognized Local 150 as:

> . . . the sole collective-bargaining representative for all drivers, hostlers and loaders performing work within the jurisdiction of this Agreement.

The job classifications described in this agreement are truckdriver, truck and trailer and double header driver, working foreman, loaders and hostlers, and combination hostler/unloader.

Local 17 claims that the operation of the transfer station is nothing more than palletizing, a task traditionally performed by warehousemen, that the disputed work therefore falls within the definition of "manual grocery warehouse work," and that the Employer is accordingly contractually bound to award the disputed work to employees it represents. Local 17 also points out that employees represented by Local 150 are contractually limited to perform loading and driving and that the Employer is therefore wrong to have assigned the disputed palletizing to employees represented by Local 150. Local 17 asserts that the Board's prior decision involving the instant parties and determining that the stacking of pallets on the dock floor through the use of forklifts establishes the parameter of the work rights of employees represented by both Unions; i.e., Local 17-represented employees are assigned all warehouse work, while Local 150-represented employees are to perform only work related to the loading of goods onto trucks.

What is ignored by Local 17's claim is the fact, as discussed above, that in the past employees represented by Local 17 and Local 150, respectively, engaged in palletizing at the old facility. While the Board's decision awarded certain specified palletizing to employees represented by Local 17, and the record establishes that since that time warehousemen have performed such work, the Board's decision did not require the cessation of all palletizing by employees represented by Local 150. To the contrary, the record clearly establishes that employees represented by Local 150 performed a substantial portion of the palletizing at the Employer's old facility.

We therefore find that the collective-bargaining agreements favor neither party to the dispute and that the Employer's past practice favors an award of the disputed work to both parties equally.

2. Efficiency and economy

The design of the Employer's new facility is largely oriented toward increased efficiency. The computerized conveyor system virtually eliminates nonproductive order selector time by entirely automating the intrawarehouse product transportation and order selection process previously performed manually by order selectors. Order selectors will no longer travel throughout the entire warehouse to assemble an order for a single customer; they will remain in one aisle, select products to fill several customer orders at a time, and place the products on a conveyor. The conveyor will then carry the products to the order sortation area where they will be electronically sorted, by customer order, into shipping lines, leaving the order selector free to continuously pull orders.

From the shipping lines, customer orders enter an "integrated loading process" specfically designed to accommodate the variable size of customer orders and to control the impact which such variation has on any one aspect of the loading process at a given point in time. As designed, the system permits a single unit of 12 employees to perform any of the loading process tasks which include palletizing sorted customer orders at the transfer station, preparing and staging the palletized orders on the loading dock, and loading the pallets on trucks for delivery. The transfer station

[7] *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

[8] We recognize that on 11 December 1981 the Employer and Local 150 executed a collective-bargaining agreement which reflected the Employer's preference to assign the disputed work to employees represented by Local 150. That Union urges us to consider that agreement rather than the one ending 31 July 1981, in analyzing the factor of collective-bargaining agreements. In light of our conclusions, *infra*, that the factors of economy and efficiency, industry practice, and employer preference favor an award of the disputed work to employees represented by Local 150, we find it unnecessary to pass on whether the 11 December-executed contract should be considered under the factor of collective-bargaining agreements in resolving the instant dispute.

mezzanine is located at the rear of the loading dock and is designed so that a person can walk from the dock floor onto the mezzanine and from one station to the next. The integrated system permits the Employer to shift employees from one task to another to meet peaks in demand, while eliminating costly "downtime" which results when no work in a particular task is available. It is also planned that the increased personal accountability of each unit employee for every task in the loading process will promote additional efficiency.

Local 17 essentially claims that the Employer's new operation would not be hampered by assigning the transfer station work to the order selectors or to a separate group of warehousemen, and additionally challenges the capability of only 12 employees performing all loading function tasks to keep pace with the work generated by order selectors, whose efficiency will increase as a result of the automated system. In response, the Employer asserts that, as the new facility is designed, it would be inefficient for an order selector to perform the transfer station work, first, because there is a substantial distance from the selection module to the transfer station,[9] and, second, because the conveyor system permits and requires constant staffing at each selection module aisle; thus, there is neither idle time nor excess staff available for the interchange suggested by Local 17. The Employer further contends that assigning any one of the loading tasks to a separate employee group having sufficient numbers to meet peak volume periods would result in costly downtime when no work was available and, therefore, be prohibitively inefficient. As to the capability of 12 employees to perform all of the tasks of the integrated loading process, the Employer contends that the varied size of customer orders, and the resultant rise and fall of work at each phase of the loading process, permits a single unit of 12 employees to adequately staff the entire loading process in most circumstances. In addition, the Employer claims that the new facility is designed for dock assignment flexibility. The product-accumulation areas, which are controlled by management personnel, allow the accumulation of products in the system prior to arrival at the transfer station. The enlarged dock can serve as a "holding area" to accommodate the staging of complete shipments on the dock floor before loading. These features, when used together, permit substantial control over the flow of work and make it possible to perform all of the loading process tasks with as few as 12 employees.

[9] It is estimated that an order selector would have to walk "900 feet plus" to get from the selection module to the transfer station.

Based on the foregoing, we find that the design of the Employer's new facility is such that the factors of efficiency and economy favor an award of the disputed work to a single employee unit here represented by Local 150.

3. Skill and safety

Local 17 claims that warehousemen have skillfully and satisfactorily performed palletizing for the Employer in the past, that they are physically able to perform this backbreaking task, and that they should therefore be assigned the work in dispute. Specifically, Local 17 contends that loading pallets from scratch, as the order selectors did at the old facility, required more skills than other aspects of palletizing because it determined the ultimate stability of the pallet. The Employer contends that both warehousemen and loaders represented by Local 150 have historically performed palletizing, making them equally qualified to perform the operations at the transfer station. The Employer notes that loaders were frequently required to rebuild or tape or strap unstable pallets palletized by warehousemen; that the significance of whatever specialized skill the order selector may have developed from loading the pallets from scratch is diminished by the fact that the formation of pallets at the transfer station will be guided by a three-sided form; and, finally, that the hydraulic mechanism at the transfer station, which makes a constant pallet height possible, will reduce the physical strain of palletizing.

On these facts, we find the factors of skill and safety favor neither party to the dispute.

4. Industry practice

The record contains evidence regarding the operations of other mechanized grocery warehousing facilities designed by Rapistan, including the Employer's own Fremont, California, operation, a Safeway facility in Richmond, Virginia, and the Certified Grocers facility in Los Angeles, California, which both Unions toured before the Employer's new facility was completed. At none of these facilities do the employees selecting orders engage in the operation of the transfer station. Rather, in each instance a single unit of employees is used interchangeably for all transfer station and dock work. This is so even though the variance in customer-order size is not near that which will exist at the Employer's new facility, and even though the Certified Grocers transfer station is not designed to facilitate employee movement between chutes and to the dock. These differences, according to the Employer, make a unified loading operation manned by a single unit of employees even more critical to the efficient operation of its new facility.

The Employer further contends that the Board's award of the disputed work in *Tradewell Stores*,[10] supports an award of the disputed work to employees represented by Local 150. In that case, the work in dispute involved removing cargo from conveyor belts and placing that cargo on pallets in trailers at the employer's distribution center. While Tradewell's operation involved an automated Rapistan system, it is distinguishable from the Employer's operation in that that system did not have a transfer station; instead, the conveyor belt transported the orders to the appropriate trailers stationed in the loading docks. However, the institution of the conveyor system at Tradewell did, as the automated system in the instant case, eliminate the use of a tugger by order selectors for transporting customer orders to the loading dock.

We find that while there are design differences in several of the operations cited by the Employer and Local 150 as support for the Employer's decision to award the disputed work to employees represented by Local 150, there are sufficient significant similarities to conclude that the factor of industry practice favors an award of the operation of the transfer stations to the loaders represented by Local 150.

5. Employer preference

Local 17 asserts that little weight should be given to the Employer's preference to assign the disputed work to employees represented by Local 150 since that decision was made in exchange for bargaining concessions regarding terms and conditions of employment extracted from Local 150 during negotiations between the two which culminated, in December 1981, in a new contract awarding the operation of the transfer stations to teamster loaders. Local 17 further contends that the Employer's assignment of the disputed work was made without regard to the resultant loss of jobs for warehousemen and suggests that the assignment was based purely on a preference for Local 150. The Employer contends that Local 17's assertions ignore the uncontradicted evidence that the Employer's decision to award the operation of the transfer stations to employees represented by Local 150 was made as early as 1979 when the Employer decided, based on economic and operational considerations alone, to build a facility with an integrated loading process.

While the Employer did not announce to the Unions, or reduce to writing, its decision to award the disputed work to employees represented by Local 150 until late 1981, shortly before the new facility was scheduled to open, the record supports a finding that the Employer's decision to integrate the loading process and assign the tasks involved therein to a single unit of employees was integral to the design of the new facility which was formulated in 1979. As to Local 17's assertion that Local 150 will be unjustly benefited by the Employer's work assignment, we note that this is based primarily on the unsubstantiated claim by Local 17 that 12 loaders will not be capable of keeping pace with the work generated by the order selectors. Further, according to the Employer, while its new mechanized operation is likely to result in a reduction in the number of positions available to warehousemen, there will not be an increase in the size of the work force represented by Local 150.

We therefore find that the Employer's preference that employees represented by Local 150 perform the disputed work was based primarily on consideration of efficiency and economy and that this factor favors a determination that employees represented by Local 150 perform the operation of the transfer station.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees represented by Local 150 are entitled to operate the transfer station at the Employer's distribution center at 3771 Channel Drive, West Sacramento, California. We reach this conclusion relying on the factors of efficiency and economy, industry practice, and employer preference. In making this determination, we are awarding all of the work in dispute to employees represented by Local 150, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

Employees of United Grocers, Ltd., who are represented by Chauffeurs, Teamsters and Helpers Union Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are entitled to perform the operation of the transfer station at the Employer's distribution center at 3771 Channel Drive, West Sacramento, California.

[10] *Teamsters Local 117 (Tradewell Stores)*, 256 NLRB 1239 (1981).